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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,377	04/27/2006	Peter Hubert Windmuller	4662-129	4401

23117 7590 05/23/2007
NIXON & VANDERHYE, PC
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ARLINGTON, VA 22203

EXAMINER

LU, C CAIXIA

ART UNIT	PAPER NUMBER
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1713

MAIL DATE	DELIVERY MODE
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05/23/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/563,377

Applicant(s)

WINDMULLER ET AL.

Examiner

Caixia Lu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) 2 and 3 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kretschmer et al. (Chemical Communications, (6), 608-609, 2002) in view of Gillis et al. (WO 97/38019) for the same rationale as set forth in the previous Office Action mailed February 8, 2007.

Response to Arguments

3. Applicant's arguments filed April 9, 2007 have been fully considered and the rejection under 35 U.S.C. 112, 2nd paragraph is withdrawn in view of the Amendments filed April 9, 2007. However, the rejection under 35 U.S.C. 103 is maintained.

Currently, only the elected metallocene catalyst complex of η^5 -(cyclopentadienyl) 1,3-bis(2,6-diethylphenyl)-iminoimidazoline titanium dimethyl is under examination. Applicants indicate that Example 4 versus Comparative Experiment C and Example 8 versus Comparative Experiment C provide unexpected higher incorporation of VNB and lower branching. The examiner disagrees. First of all, the catalyst complexes, Cat 1 and Cat 2 are not the elected catalyst under examination; and applicants need to provide unexpected results for the elected catalyst complex. Secondly, Example 4 and Comparative Experiment C are not comparable since different catalyst complexes are used: Cat 2 is used in Example 4 while Cat 1 is used Comparative Experiment C; thus, meaningful comparison can not be made based on the comparison. Thirdly,

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Comparative Experiment C is within the scope of the instant claims because the cocatalyst of t-BF₂O meets the limitation of "a further activating compound" limitation of the instant claims, therefore, the instant claims do not exclude the presence of a borate activator. In view of the foregoing, the rejection under 35 U.S.C. 103 of record is deemed proper and thus maintained.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Caixia Lu whose telephone number is (571) 272-1106. The examiner can normally be reached from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful and the matter is urgent, the examiner's supervisor, David Wu, can be reached at (571) 272-1114. The fax numbers for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1700.



Caixia Lu, Ph. D.
Primary Examiner